IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8025 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKUMAR RAMSWAROOP GARG

Versus

CHAIRMAN & CHIEF MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 8025 of 2004

MR PK HANDA for Petitioner No. 1

MS PAURAMI B SHETH for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 02/03/2005

ORAL JUDGEMENT

RULE. Learned counsel Ms.Sheth waives service of notice of rule on behalf of the respondents. At the joint

request of learned advocates appearing for the parties, this matter is taken up for final disposal today.

In the present petition, the petitioner is seeking promotion under Lateral Advancement Promotion scheme with effect from 19-5-1998. The petitioner has also prayed for being granted promotion to the post of TES Group-B with effect from May 2000.

The case of the petitioner is that the department had formulated a scheme for upgradation of pay scale upon completion of certain number of years of service without promotion. The said scheme was formulated by the department and envisaged that after completion of 12 years, the employee would be entitled to lateral advancement promotion. The case of the petitioner is that he completed 12 years of service on 19-5-1998 and he, therefore, ought to have been granted promotion. The petitioner has also claimed promotion to the post of TES Group-B with effect from May 2000.

The case of the respondents is that DPC was held on 8-11-1999 to consider the cases of the officers, who had completed 12 years of service for granting Lateral Advancement Promotion. It is the case of the respondents that by the time DPC met, the petitioner was served with a charge sheet dated 24-8-1998. On account of this disciplinary case, the recommendations of the DPC were kept in sealed cover. In the subsequent DPC also, since the departmental proceedings were pending, case of the petitioner was kept in sealed cover. It is pointed out that the disciplinary authority imposed punishment of stoppage of one increment and upon appeal filed by the petitioner, the appellate authority modified the punishment to that of censure by an order dated 15-12-2003. It is, therefore, contended that in view of the departmental proceedings and in view of the ultimate penalty imposed on the petitioner, his case was rightly not considered for Lateral Advancement Promotion with effect from 19-5-1998.

In rejoinder, learned counsel for the petitioner submits that the department has later on decided that for granting Lateral Advancement Promotion it is not necessary to hold DPC, and in any case the DPC which met in November 1999 was considering the case of the petitioner as on 19-5-1998 on which date there was no departmental inquiry against the petitioner pending, therefore, his case ought to have been considered for promotion without resorting to seal cover procedure.

Considering the submission made, it appears that the case of the petitioner for grant of Lateral Advancement Promotion was to be considered on 19-5-1998, when he completed 12 years of service. DPC which therefore met on 8-11-1999 ought to have considered his case as emerged from the service record of the petitioner on 19-5-1998 and subsequent issuance of charge sheet on 24-8-1998 could not have been utilized to keep the case of the petitioner in sealed cover.

In the decision of the Hon'ble Supreme Court in Delhi Jal Board v. Mahinder Singh reported in AIR 2000 SC 2767, the Hon'ble Supreme Court found that it was not open for the employer to hold back the promotion of the employee on the ground that by the time the employee was exonerated in departmental proceedings, due to which his case was kept in sealed cover, a fresh departmental inquiry was initiated against him. It was held that mere fact that by the time disciplinary proceedings in the first inquiry ended in favour of the employee and by the time the sealed cover was opened to give effect to it, another departmental proceeding was started by the department, would not come in way of the employee in getting the benefit of the assessment of the first departmental promotion committee in his favour.

It can, therefore, be seen that the respondents erred in keeping the case of the petitioner in a sealed cover. As noted earlier, the only punishment imposed on the petitioner was that of censure. Additionally, subsequently, the respondents have decided not to hold the DPC at all while considering the case of the employees for Lateral Advancement Promotion. Considering all these aspects of the matter, I find that the respondents ought to have granted necessary promotion to the petitioner with effect from due date, namely, 19-5-1998. Therefore, by allowing this petition, it is directed that the respondents shall grant necessary promotion to the petitioner from due date and the arrears thereof shall also be paid, if found due.

The prayer regarding promotion to TES Group-B, however, stands on different footing, since by the time his case for consideration had ripen, the petitioner was already facing departmental inquiry, which ultimately did not result into is complete exoneration. It will be open for the petitioner to approach the authorities for being considered for promotion to TES Group-B upon completion of his punishment period.

With these directions, this petition is allowed

to the above extent. Rule is made absolute accordingly.
No order as to costs.

(Akil Kureshi, J.)
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